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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/628,033	07/25/2003	Paul Harold Bryson	66140P029	3354
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8791	7590	10/12/2005
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EXAMINER
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YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/628,033	BRYSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gina C. Yu	1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/23/03</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 15 recites a pH of "less than about" 3.5. The term "less than about" renders the claim vague and indefinite because "about 3.5" may include numbers that are greater than 3.5. Thus it is not clear what the metes and bounds of the scope of the limitation "less than about 3.5" are.

The term "quaternium" is understood to mean a quaternary ammonium compound. Claim 9 however recites that a single quaternium compound "comprises a material selected from the group consisting of behentrimonium methosulfate, cetearyl alcohol, and mixtures and blends thereof." Cetearyl alcohol may be present in a commercially available product in the form of a mixture with a quaternary ammonium compound, but is not itself a quaternium. Thus claim 9 is vague and indefinite.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –  
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

**Claims 1, 2, 5-8, 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Flick (Cosmetic and Toiletry Formulations).**

Flick discloses a topical skin treatment emulsion comprising 4.76 % wt glycerin (glycol), 1.43 % of Veegum and 0.29 % of xanthan gum (polymeric viscosity modifiers), 1.43 % of dimethicone, 7.14 % of glycolic acid (67 % solution), 63.51 % of water, and cetyl alcohol. The pH is in the range of 3.5 – 4. See instant claims 1, 2, 5-8, 13, 14. The method of topically applying the composition is the inherent use of the product. See instant claim 15.

**Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Clarke et al. (US 4818523).**

Clarke et al. disclose hair conditioning composition comprising a glycol (propylene glycol), a silicone, a quaternium (dodecyl trimethyl ammonium chloride), and a polymeric thickener (hydroxyethylcellulose). See instant claims 1 and 7. See Example 1. The composition also comprises Germaben II which is a mixture of parabens. See instant claim 13. The reference teaches making the composition in the range of pH 3-4. See col. 9, lines 20-51. See instant claims 2-4. Less than 1 % of an alpha-hydroxy acid includes zero content of the component. See instant claim 5.

**Claims 1, 7, 10, 13, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Patt et al. (US 6927205 B2).**

Example 4 discloses an emulsion comprising propylene glycol, quaternium 82, polyquaternium-37, PPG-1-trideceth-6, cetyl dimethicone copolyol and parabens. See instant claims 1, 7, 10, 13, and 14. Less than 1 % of an alpha-hydroxy acid includes zero content of the component. See instant claim 5.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1, 5, 7-9, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Espinoza (US 6709773 B2).**

Espinoza teaches cosmetic compositions. The reference teaches multivesicular emulsion drug delivery composition. The reference teaches using a mixture of behentrimonium methosulfate, which is derived from rapeseed oil, and cetearyl alcohol

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as an emulsifier. See col. 2, line 61, line 3, line 60. See instant claims 9 and 11. A sample sunscreen lotion formulation contains 3 % of Incroquat Behenyl TMS, 4 % of glycerin, 66.2 % of water, and avocado oil. See instant claims 1, 6, 11-13. . Glycols including glycerin, propylene glycol, and butylene glycol are also taught as solvent and moisturizers in col. 5, lines 3-10 and lines 37 – 55, and used in sample formulations. Preservatives including parabens are taught in col. 5, lines 24 – 37.

While the reference does not disclose a specific formulation comprising a polymer viscosity modulator, using polymeric viscosity modifiers such as hydroxyethylcellulose, xanthan gum, and veegum are taught in col. 4, line 55 – col. 5, line 2. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of the sample formulation by adding the polymeric viscosity modifiers as taught by the reference to make a composition with increased viscosity.

### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM.

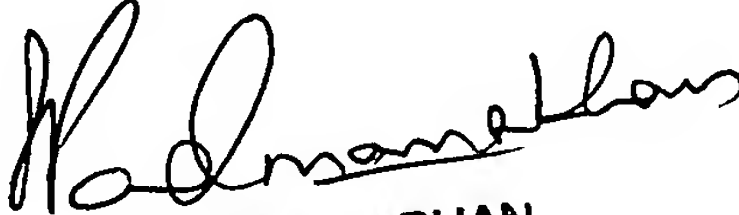
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Patent Examiner

  
SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER